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OCT 25, 2001

VIA OVERNIGHT DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE: Rulemaking Amendments of Regulations for Telephone Service Providers,
Docket No. 00-00873

Dear Mr. Waddell:

Enclosed for filing in the above-referenced proceeding are an original and twelve copies of the Comments of the Tennessee Rural Independent Group, which consists of Ardmore Telephone Company, Inc.; CenturyTel of Adamsville, Inc.; CenturyTel of Claiborne, Inc.; CenturyTel of Ooltewah-Collegedale, Inc.; Crockett Telephone Company, Inc.; West Tennessee Telephone Company, Inc.; Peoples Telephone Company; and Loretto Telephone Company, Inc.

Please stamp as received the enclosed copy marked "stamp and return" and return it in the enclosed postage-paid envelope.

Sincerely,



John B. Adams, Esq.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:)
)
AMENDMENTS TO CHAPTER 1220-4-2,)
REGULATIONS FOR TELEPHONE)
TELECOMMUNICATIONS SERVICE)
PROVIDERS)

COMMENTS OF THE TENNESSEE RURAL INDEPENDENT GROUP

Ardmore Telephone Company, CenturyTel of Adamsville, CenturyTel of Claiborne, CenturyTel of Ooltewah-Collegedale, Crockett Telephone Company, Loretto Telephone Company, Peoples Telephone Company, and West Tennessee Telephone Company (together "Rural Independents"), by counsel, submits these joint comments in response to the August 16, 2001 Notice of Filing ("Notice") regarding Staff's redraft of the proposed amendments to the Regulations for Telephone Telecommunications Service Providers.

Introduction

There is no apparent or compelling reason to impose the proposed rules on the Rural Independents. The Rural Independents are committed to providing the best service possible to their customers, and do so on an individualized basis that is difficult to achieve with large companies. The result is that customers are satisfied with the service provided by the Rural Independents. This is demonstrated by the paucity of customer complaints filed against them. During the first half of 2001, the Rural Independents had a total of 17 complaints filed against them. Those complaints dealt primarily with billing disputes or problems with interexchange carriers, not the quality of the services provided by the Rural Independents.

As the Rural Independents have previously explained in filed comments and in the workshops that were conducted in this proceeding, employees and managers of the Rural Independents are friends and neighbors of their customers. These relationships engender a responsiveness to customer needs and concerns that goes far beyond anything that can be mandated in a rule. The proposed rules are unlikely to increase customer satisfaction. They are more likely to decrease it to the extent that the rules take a one-size-fits all approach that severely limits the Rural Independents' flexibility to respond to individual customer needs. Personalized service is a major source of customer satisfaction for the Rural Independents. Unfortunately, the proposed rules, which are an attempt to define "good service" in very strict statistical terms and to force all carriers to meet the strict statistical measures, will force the Rural Independents' to adopt strict procedures and time lines that will doom personalized service.

In this regard, the proposed service quality rules reflect a fundamental change in philosophy by the TRA regarding service quality standards. The existing rules expressly state that "no single statistical measure can serve as a strict demarcation level between 'good' and 'poor' service for every company in Tennessee." Existing Rule 1220-4-2-.34(1). The proposed rules utterly reject this statement, and do so without explanation or justification.

The proposed rules are directly and openly aimed at mandating a single quantity of service that all companies in Tennessee must provide. They attempt to achieve this goal by mandating stringent service standards that, as will be demonstrated below, effectively eliminate the ability of the Rural Independents to make business judgements and to respond to individualized customer needs. To a large degree, the proposed rules ignore the geographic and demographic differences

among companies providing telephone service in Tennessee, factors for which the existing rules expressly account. Thus, the proposed rules effectively legislate how a company must be run and what investments must be made, regardless of whether the required action makes sense in the context of a specific company. Ultimately, the proposed rules will harm customer satisfaction with the Rural Independents.

The current redraft of the proposed rules do reflect input from the Rural Independents and the other industry members who actively participated in the workshops. While less onerous than the proposed rules that were published in August 2000, the currently proposed rules unfortunately still impose unnecessary and undue burdens on the Rural Independents. Further, some of the proposed rules appear to be unlawful. As will be discussed in more detail below, compliance with the revised rules will cost the Rural Independents hundreds of thousands of dollars in compliance expenses and will jeopardize nearly \$2 million in annual unregulated billing and collection revenue.

The Rural Independents therefore respectfully request that these proposed rules not be applied to them. The costs, in terms of forced expenditures and reduced customer satisfaction, of applying the proposed rules to the Rural Independents are just too high.

To demonstrate the enormous costs and burdens the proposed rules would impose upon them, the Rural Independents offer the following analysis of the proposed rules.

Installation and Repair Time Requirements

As an initial matter, Rule 1220-4-2-.01(15)¹ defines “primary service” so broadly as to exclude nothing. Every provision of dial tone to a line is primary service under this definition, even

¹ Unless otherwise noted, all rule references are to the redraft of the proposed rules.

if, for example, it is to a residential customer's third additional line installed 5 years after service was first provided to them. This renders the word "primary" meaningless. To the extent that primary service needs to be defined, defining it as the initial provision of dial tone to a customer appears to make more sense.

The real impact of this definition is felt in the context of Rules 1220-4-2-.16(1)(b) and (c), which set mandatory times for installation of "primary service." In order to meet these requirements, especially the requirement that "primary service" installations for which no construction is required be completed in an average of three days, the Rural Independents will have to significantly increase their installation and repair staffs.

Even with increased staffing, the proposed rule leaves little room for the inevitable emergency situations, such as restoring service after ice or electrical storms down lines, that normally take precedence over installations. It also leaves no room for the inevitable missed or delayed installation appointments that are caused by the customer, which often take the form of a customer not being home when the technician arrives. The rule makes no exception for missing the three-day time frame regardless of whether the fault for missing it lies with the telephone company.²

Even changing the definition as suggested above may not be sufficient to resolve the problem. Substantial system upgrades will be necessary to begin tracking installation times down to the hour. Because the proposal to use an average is a change from the first draft of the revised

² Additionally, Union County is now prohibiting local telephone companies from installing service in locations that do not have a 911 address. Thus, to comply with County requirements, a Rural Independent serving Union County would have to delay installation of service until such time as the County completes 911 addressing at new service locations.

rules, the Rural Independents have not had opportunity to fully quantify the cost to complete these system upgrades. However, such upgrades would be unnecessary if the rule were changed to require that a certain percentage of installations be completed within a certain number of days. This is how the proposed rules measure installation times when construction is required and how installation times are currently measured, and the system works well. Further, while the Rural Independents, taken together, complete many installations within three days now, barring such events as storms or other emergencies, practically all of their installations are completed within five days, unless the customer requests otherwise. Importantly, customers do not complain to the TRA or to the Rural Independents about their installation times.

Further, the current rule allows the Rural Independents the flexibility to move to the front of the queue those customers who demand or who need immediate installation of service. That flexibility will be eliminated by the proposed rules as the Rural Independents will have to worry about making their averages rather than responding to particular customer needs. While the proposed rule is well-intentioned, it is likely to have the opposite of its intended effect on the Rural Independents' customer satisfaction.

The impact of this rule on the Rural Independents is increased by the high standards set for repair times because the same technicians, trucks, and equipment are used to complete both installations and repairs. There is no existing standard for how quickly outages must be repaired, yet the TRA does not receive complaints about the Rural Independents' outage restoration times to warrant imposition of the standard proposed in Rule 1220-4-2-.16(1)(h). This standard also fails to take into account weather and other factors that may be unique to rural areas. After a severe ice

or electrical storm, 30 hours may not be a realistic time frame, especially in rural areas where many trees may be downed and lines are long.

Further, the unfortunate reality is that hunting season causes significant increases in outages and troubles in rural areas. The Rural Independents' repair technicians worked feverishly during the recently completed dove season to repair lines damaged from being shot. Because hunting, by its very nature, occurs in the most remote areas, damage caused by hunting activities may require more time to locate and to repair. This is unlikely to be a problem for telephone companies that serve more urban and suburban areas, which demonstrates the wisdom of the TRA's existing rules to take into account the differences among companies and the regions they serve before imposing punitive measures for failure to meet minimum service standards.

In this regard, the Rural Independents note that while Rule 1220-4-2-.17 does not impose Quality Service Measures (QSMs) until after a telephone company fails to meet a standard for three months in a calendar year, three storms in a year or a combination of storms and hunters, which is well within the realm of possibility, could push a Rural Independent over the limit. The financial consequences of that are substantial.

As a final matter, the proposed rules do not account for the fact that the Rural Independents do not regularly provide repair and installation services, except for emergencies, on weekends and holidays. As written, the proposed rules would require the Rural Independents to begin providing these services seven days a week, 365 days a year. The cost of this would be substantial as this would further increase the number of additional repair and installation technicians that would be required. It would also effectively require additional back office and supply (warehouse) operations

to be kept open on weekends and holidays at an additional expense. Customer demand, however, does not support maintaining these operations during weekends and holidays.

Trouble Reports

The standards proposed in Rules 1220-4-2-.16(e)-(g) are simply unattainable for the Rural Independents. While the proposed rules may appear to be a relatively small tightening of the existing standard, this is far from the case. There are several factors that make the proposed standard substantially more difficult to meet than the existing rule.

First, the existing rule (Existing Rule 1220-4-2-.39) measures trouble *responses* while the proposed rule measures trouble reports. This one-word difference has a huge impact. Under the existing rule, no matter how many times a single trouble is reported, a single trouble requires only one response and therefore only a single response is reportable. The proposed rule would count every trouble report as that term is defined. Thus, normal seasonal fluctuations could push a Rural Independent into paying QSMs.

Additionally, the Rural Independents believe that it is fairly common throughout the industry in Tennessee to not include in the current measure those troubles that are found to be in the customer's equipment or inside wire. The proposed rule, which counts trouble reports, would not appear to permit this. There is simply no reason, however, to judge any telephone companies' performance or to hold them liable to pay QSMs on the basis of troubles that are outside of their networks and their control. Troubles in the customer's equipment or inside wire do not in any way reflect on how well a telephone company is maintaining its network. Thus, including such troubles in a measure of the telephone companies' performance will overstate the number of problems that

occur in the companies' networks.

There is also a statistical problem with the proposed rule. Small exchanges, which equate to small statistical sample sizes, tend to have much broader fluctuations in any measure (here, trouble reports) than do larger exchanges or sample sizes. Because the proposed rule sets a standard for trouble reports by exchange by month, it is much more likely that a Rural Independent will violate the rule than will a more urban company solely because the Rural Independents tend to have smaller exchanges. Being small, however, is not unlawful and does not merit punishment. The proposed minor difference in the allowable number of trouble reports based on exchange size is insufficient to solve this problem.

Quality Service Measures (QSMs)

The QSMs contained in Rule 1220-4-2-.17 are especially troubling. This is true not only because of the magnitude of the punishment meted out, but also because of the uncertain legal basis to support them. The QSMs, while couched in terms of customer credits, with one exception, are obviously intended to be punishment to a telephone company that fails to meet the new monolithic, statistical vision of good service contained in the proposed rules. The Legislature, however, has explicitly described the TRA's authority to penalize carriers who violate its rules. TCA § 65-4-120 provides for a penalty of \$50.00 per violation per day of the violation. No other penalties are authorized by statute. Therefore, there does not appear to be any authority granted to the TRA to impose the penalties contained in proposed rule 1220-4-2-.17, except possibly for 1220-4-2-.17(3).

It is also noteworthy that TCA § 65-4-120 requires that a hearing be held prior to imposition of the penalties authorized thereby. To the extent that the QSMs apply automatically and without

a hearing, they appear to violate the statutory command to hold a hearing and to violate constitutional guarantees of due process.

The Rural Independents realize that the TRA has rate-making authority and that the “adequacy” of the service provided is an element to be considered in setting rates. The statutory references to this authority, however, contemplate service adequacy being a factor to be considered in a general rate-making proceeding rather than as a trigger for *post hoc* “customer credits.” See TCA 65-5-201. Be that as it may, to the extent that the QSMs have a rate-making function, they result in confiscatory rates.

The rates charged by the Rural Independents vary. Some monthly rates for residential local service are as low as \$3.66 per month. Thus, a QSM that reduces that rate by \$5.00 or \$5.00 per day results in negative rates. It should be beyond dispute that negative rates would be deemed confiscatory. Further, the automatic manner in which the QSMs apply would also violate due process protections and the statutory command to fix rates after a hearing.

Although it could be argued that the QSMs are damages awards, that argument necessarily fails as the QSMs require customer credits to be issued to customers other than those who are “harmed” by the “poor service” that led to their invocation. To the extent, however, that the QSMs are damages awards, they would violate due process protections as no adjudication is held to determine liability or the amount of the injury. In any event, it is not clear that the TRA has authority to award damages.

Ultimately, there appears to be no legal basis of support for adopting the proposed QSMs.

Refunds for Outages

Similarly, Rule 1220-4-2-.04 contains requirements for customer credits that suffer from the same legal infirmities as the QSMs. Beyond the legal issues, the requirements for customer credits are extremely harsh.

While the Rural Independents' tariffs all contain a provision for customer credits when service is out, their tariffs also provide that the companies are not liable when an outage is caused by an Act of God or a civil disturbance. This is common across the industry and reflects the standard practice in this country of excusing failures to perform contractual duties when the failure is the result of such causes. The proposed rule, however, requires credits even when the outage is caused by an Act of God or by a civil disturbance.

The proposed rule goes even farther by requiring a larger credit if an outage is caused by any cause other than an Act of God or civil disturbance. There is no exception for outages caused by the customer. This means that a customer who causes an outage will be entitled to a credit. In keeping with standard industry practice and principles of fairness, credits should not be required if the outage is caused by a third party over whom the telephone company has no control or by the customer.

Disconnection of Local Service

Rule 1220-4-2-.06 severely limits a telephone company's ability to collect just and due debts, and will significantly increase uncollectibles. Although the rule may appear benign because it permits disconnection of local service for nonpayment of local charges, but not for other charges, it is not. Many local exchange carriers ("LECs"), including the Rural Independents, provide billing and collection services to interexchange carriers. As part of that service, the Rural Independents, like

other LECs, routinely purchase the IXC's receivables. Therefore, when a customer fails to pay toll charges, it is the Rural Independent, not the IXC that incurs the uncollectible. Even if the Rural Independents are able to recourse such uncollectibles back to the IXCs, which is the case under some billing and collection contracts, the proposed rule will cause Rural Independents to incur significant additional expenses in attempting to collect debts and ultimately sending them back to the IXC.

Thus, this proposed rule increases costs and reduces the effectiveness and efficiency of billing and collection services. At worst, the rule could jeopardize existing billing and collection revenue streams, which amount in the aggregate to nearly \$2 million annually for the Rural Independents.

Apart from these concerns, the Rural Independents are ultimately at a loss to explain why customers who pay their bills should be forced to subsidize those who do not. Yet, this is the real-world effect of the proposed rule on the Rural Independents' customers.

Number Conservation

The proposed number conservation rule, Rule 1220-4-2-.19, largely duplicate rules and orders of the Federal Communications Commission, which has jurisdiction over these issues, and therefore appear to be unnecessary. More importantly, however, the rules regarding thousands-block number pooling inaccurately state federal law and the authority that has been delegated by the FCC to the TRA.

While Rule 1220-4-2-.19(1)(d) could be taken to suggest by negative inference that those LECs that have not implemented permanent local number portability are not required to engage in thousands-block number pooling, Rules 1220-4-2-.19(1)(a), (b), and (f) require all local service

providers to participate in activities that are part of thousands-block number pooling. Under federal law and the FCC's delegation of authority to the TRA, however, only those LECs that have implemented permanent local number portability can be required to participate in thousands-block number pooling. None of the Rural Independents have implemented and none are currently required to implement permanent local number portability. They cannot therefore be required to participate in thousands-block number pooling.

Further, to the extent that rate center consolidation is undertaken in a way that requires NXXs to be split among different central offices, Rule 1220-4-2-.19(1)(c) could also effectively require a Rural Independent that has not implemented permanent local number portability to do so. Under applicable law, however, rate center consolidation is not a basis for requiring a Rural Independent to implement permanent local number portability.

Directory Assistance, Business Office, and Repair Answer Times

Rule 1220-4-2-.16(1)(o) permits companies that serve less than 100,000 access lines in Tennessee (e.g. the Rural Independents) and that have not installed answer time measurement equipment to seek an exemption from the answer time requirements. This exemption is welcome, although it is not clear why a separate petition for an exemption is necessary when the exemption could easily be included in the rule. The requirement to file a separate petition is yet another way that, despite obvious good intentions, the proposed rules impose additional burdens and expenses on the Rural Independents without any apparent need or benefit.

This proposed rule, however, also unnecessarily imposes burdens on the TRA to review and to act upon such petitions. This is especially true when the only qualifications to obtain an

exemption are that the company serve 100,000 or fewer access lines in Tennessee and not have installed answer time measurement equipment as of the effective date of the rule. These are easily verified factual qualifications. Thus, it would be easy for the TRA to detect companies that may unjustly claim the exemption, and there is no need for a petition process to be used to ensure that only “qualified” companies claim the exemption.

Moreover, the proposed rule also requires business and repair offices and directory assistance to be open from 7 a.m. to 10 p.m. This is not a problem for directory assistance, which is already available 24 hours a day, everyday. But it is a significant problem with respect to repair and business offices.

Most of the Rural Independents maintain only local business offices that are open regular business hours. The requirement to be open from 7 a.m. to 10 p.m. would require a significant increase in business and repair office personnel as it would be necessary to operate two shifts a day. Additionally, because there is no exception for weekends and holidays, the rule requires these hours to be maintained every day of the year. The Rural Independents’ business offices generally are closed on weekends and on holidays.

Thus, the cost to comply with this portion of the rule will likely far outstrip the cost of the answering time measurement equipment that formed the basis for the exemption for the Rural Independents to not have to install the equipment. The Rural Independents estimated that the per-office cost of answer time measuring equipment was a minimum of \$12,000.00 for each office. Thus, a company like TEC³ that maintains four different local business offices would incur a

³ TEC includes the Crockett, Peoples, and West Tennessee telephone companies.

minimum cost

of \$48,000.00 to install equipment to measure how quickly it answers calls when it only has approximately 15,500 access lines.

Other Rules

Multiple other rules impose additional costs and burdens on the Rural Independents without any perceivable need. These include: 1) the White Pages rules, which require additional material to be included in the directories; 2) the soft dial tone requirements, which some of the Rural Independents do not have the capability to provide; 3) multiple rules that will require significant system upgrades to billing and administrative systems, such as the rules requiring allocation of partial payments and those imposing various new tracking requirements; 4) the rules requiring a longer period before payment can be considered delinquent and longer notice periods before disconnecting service for nonpayment, which will increase uncollectibles; 5) the minimum data speed requirements, and 6) the rule requiring each telephone company to post its state-approved tariffs on its web site, when not all of the Rural Independents have web sites.


Conclusion

The Rural Independents maintain high levels of customer service and customer satisfaction. They do so by being responsive to customer needs and by providing personalized service. After all, their customers are their friends and neighbors. Unfortunately, the proposed rules will force the Rural Independents to operate just like every other telephone company in Tennessee, regardless of size, geography, or demographic factors. This will reduce the flexibility the Rural Independents currently have to make business judgements and to provide personalized service. Ultimately, imposition of the proposed rules will decrease customer satisfaction among customers the Rural

Independents serve. It will also significantly increase costs. That is a bad deal for everyone. The Rural Independents therefore respectfully request that the proposed rules not be applied to them.

Respectfully submitted,

Ardmore Telephone Company, CenturyTel
of Adamsville, CenturyTel of Claiborne,
CenturyTel of Ooltewah-Collegedale,
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October 25, 2001

Their Attorney

CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Tennessee Rural Independent Group" was served on this 25th day of October 2001, by first class US mail postage prepaid, to the following parties:


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